

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IN RE: TAASERA LICENSING LLC,
PATENT LITIGATION

CIVIL ACTION NO. 2:22-MD-03042-JRG

JURY TRIAL DEMANDED

THIS DOCUMENT RELATES TO ALL
CASES

**DEFENDANTS CHECK POINT SOFTWARE TECHNOLOGIES LTD.'S, TREND
MICRO INC.'S, FORTINET, INC.'S, MUSARUBRA US LLC, D/B/A TRELLIX'S, PALO
ALTO NETWORKS, INC.'S, CROWDSTRIKE, INC.'S, AND CROWDSTRIKE
HOLDINGS, INC.'S SUR-REPLY IN RESPONSE TO ARGUMENTS NEWLY RAISED
IN PLAINTIFF'S REPLY CLAIM CONSTRUCTION BRIEF**

Plaintiff presented new arguments for the first time in its reply regarding the term “substantially real-time.” Defendants respond here.¹

“SUBSTANTIALLY REAL-TIME”

The parties agree that the term “substantially real-time” is a term of degree. *See, e.g.*, Dkt. 256 at 34. In its opening brief, Taasera argued that the specification “provides a standard for measuring that degree” because “substantially real-time involves persistent storage of mobile device status information and comparison of both old and new incoming mobile device status information.” *Id.* at 34. But Taasera failed to explain how the type of storage or the recitation of an (unclaimed) act of comparison would provide a POSITA with objective boundaries with which to assess this term. Dkt. 259 at 30-32.

Taasera’s new reply arguments suffer from two fatal flaws. First, Taasera relies on passages in the specification discussing irrelevant processes. The limitation at issue reads: “status information for each mobile device *is gathered* from a plurality of sources ... *in a substantially real-time manner*.” ’518 Patent, Cl. 1. Rather than focusing on the process of *gathering* status information, Taasera’s reply brief cites passages relating to *processing* status information, *updating* records, and *taking actions* by the mobile device. Dkt. 256 at 12-13. So even if these passages provide objective boundaries to assess the term “substantially real-time” in some contexts (they do not),² they do nothing to inform a POSITA what it means to gather status information in “substantially real time.”

Second, the cited passages fail to set forth the type of objective boundaries required to find this term of degree definite. There is nothing in the ’518 Patent that would inform a POSITA how

¹ This term is only recited in the claims of the ’518 Patent, which is asserted only against Check Point and Trellix. *See also* Dkt. 259 at 1, n. 2.

² In fact, some of the relied-on passages purport to describe only “real-time.”

to assess this term of degree, either qualitatively or quantitatively. For example, the “updating records” passage cited by Taasera simply says device database can provide “substantially real-time information” without giving any indication of how close in time something needs to occur to be considered “substantially real-time.” *See* ’518 Patent at 10:48-51. Other cited passages describe “non-limiting example[s]” (Reply at 13 (citing ’518 Patent at 12:64-3:9), which cannot objectively define the boundaries of a term of degree. *See Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1371 (Fed. Cir. 2014) (being able to ascribe some meaning to a claim insufficient to define bounds of a term of degree).

Finally, Plaintiff’s citation to its expert’s testimony cannot save its theory. Dr. Cole’s testimony is directed at two terms—“real-time” and “substantially real-time”—and concludes that they share the same meaning, which he opines to be “without intentional delay, given the processing limitations of the system.” Cole Decl. at ¶¶83, 85. Not even Plaintiff maintains that position.³ *See* Dkt. 276-1 at 165, n.2; *cf.* Dkt. 256 at 31-34. Moreover, Dr. Cole did not opine that the specification provided “objective boundaries” to a POSITA. *See* Dkt. 259 at 32.

³ Plaintiff now argues that Dr. Cole’s interpretation is only the meaning of “substantially real-time” and that “real-time” should instead be construed as having an unspecified “plain and ordinary meaning.” Plaintiff’s flip-flopping, contradicting of its own expert, and new proposal of “real-time,” only adds to the unresolvable ambiguity of the term “substantially real-time.”

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Respectfully submitted,

By: /s/ Eric H. Findlay

Eric H. Findlay

State Bar No. 00789886

Brian Craft

State Bar No. 04972020

FINDLAY CRAFT, P.C.

7270 Crosswater Avenue, Suite B

Tyler, Texas 75703

Telephone: (903) 534-1100

Facsimile: (903)-534-1137

Email: efindlay@findlaycraft.com

Email: bcraft@findlaycraft.com

Clement S. Roberts

Email: croberts@orrick.com

CA State Bar No. 209203

Sarah K. Mullins

Email: sarahmullins@orrick.com

**ORRICK, HERRINGTON &
SUTCLIFFE LLP**

405 Howard Street

San Francisco, CA 94105

Telephone: (415) 773-5700

Facsimile: (415) 773-5759

Alyssa Caridis

Email: acaridis@orrick.com

Gerald Porter

gporter@orrick.com

David Medina

dmedina@orrick.com

Jake O'Neal (Admitted Pro Hac Vice)

Email: jake.oneal@orrick.com

**ORRICK, HERRINGTON &
SUTCLIFFE LLP**

355 S. Grand Ave, Suite 2700

Los Angeles, CA 90071

Telephone: (213) 612-2372

Facsimile: (213) 612-2499

Evan Brewer (Admitted Pro Hac Vice)

Email: ebrewer@orrick.com

**ORRICK, HERRINGTON &
SUTCLIFFE LLP**

100 Marsh Road

Menlo Park, CA 94025

Telephone: (650) 614-7497

Facsimile: (650) 614-7401

***ATTORNEYS FOR CHECK POINT
SOFTWARE TECHNOLOGIES LTD.***

/s/ Irene Yang

Irene Yang

California State Bar No. 245464

irene.yang@sidley.com

SIDLEY AUSTIN LLP

555 California Street, Suite 2000

San Francisco, CA 94104

Telephone: (415) 772-1200

Facsimile: (415) 772-7400

Andrew T. Langford

Texas State Bar No. 24087886

alangford@sidley.com

Erik B. Fountain

Texas State Bar No. 24097701

efountain@sidley.com

SIDLEY AUSTIN LLP

2021 McKinney Avenue, Suite 2000

Dallas, TX 75201

Telephone: (214) 981-3300

Facsimile: (214) 981-3400

J. Mark Mann

State Bar No. 12926150

Mark@TheMannFirm.com
G. Blake Thompson
State Bar No. 24042033
Blake@TheMannFirm.com
MANN | TINDEL | THOMPSON
201 E. Howard St.
Henderson, Texas 75654
(903) 657-8540
(903) 657-6003 (fax)

***ATTORNEYS FOR DEFENDANTS
CROWDSTRIKE, INC. and
CROWDSTRIKE HOLDINGS, INC.***

/s/ D. Stuart Bartow

Melissa R. Smith
State Bar No. 07921800
Email: melissa@gillamsmithlaw.com
GILLAM & SMITH, LLP
303 S. Washington Avenue
Marshall, Texas 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257

D. Stuart Bartow
DUANE MORRIS LLP
2475 Hanover Street
Palo Alto, CA 94304
Telephone: (650) 847-4150
Facsimile: (650) 618-8505
dsbartow@duanemorris.com

Holly Engelmann
State Bar No. 24040865
Email: HEngelmann@duanemorris.com
DUANE MORRIS LLP
100 Crescent Court, Suite 1200
Dallas, Texas 75201
Telephone: (214) 257-7200

Fax: (214) 257-7201

Gilbert A. Greene

TX Bar No. 24045976

W. Andrew Liddell

TX Bar No. 24070145

BGreene@duanemorris.com

WALiddell@duanemorris.com

DUANE MORRIS LLP

Las Cimas IV

900 S. Cap. of Texas Hwy, Suite 300

Austin, TX 78746-5435

Telephone: 512-277-2300

Facsimile: 512-277-2301

Christopher J. Tyson

DUANE MORRIS LLP

901 New York Avenue N.W., Suite 700 East

Washington, DC 20001-4795

Telephone: (202) 776-7800

Facsimile: (202) 776-7801

cjtyson@duanemorris.com

Brianna M. Vinci

bvinci@duanemorris.com

DUANE MORRIS LLP

30 S. 17th Street

Philadelphia, PA 19103

Telephone: 215-979-1198

Facsimile: 215-754-4983

***ATTORNEYS FOR TREND MICRO
INCORPORATED (JAPAN)***

/s/ Matthew C. Gaudet

Melissa R. Smith

State Bar No. 07921800
Email: melissa@gillamsmithlaw.com
GILLAM & SMITH, LLP
303 S. Washington Avenue
Marshall, Texas 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257

Matthew C. Gaudet
Email: mcgaudet@duanemorris.com
David C. Dotson
Email: dcdotson@duanemorris.com
Alice Snedeker
Email: aesnedeker@duanemorris.com
DUANE MORRIS LLP
1075 Peachtree St NE, Suite 1700
Atlanta, Georgia 30309
Telephone: (404) 253-6989

Holly E. Engelmann
State Bar No. 24040865
Email: HEngelmann@duanemorris.com
DUANE MORRIS LLP
100 Crescent Court, Suite 1200
Dallas, Texas 75201
Telephone: (214) 257-7200
Fax: (214) 257-7201

Christopher J. Tyson
Email: cjtyson@duanemorris.com
DUANE MORRIS LLP
901 New York Ave NW, Suite 700
Washington, D.C. 20001
Telephone: (202) 776-7800
Fax: (202) 776-7801
ATTORNEYS FOR FORTINET INC.

/s/ Nathaniel St. Clair, II

Nathaniel St. Clair, II
State Bar No. 24071564
Email: nstclair@jw.com
Blake T. Dietrich
Texas State Bar No. 24087420
Email: bdietrich@jw.com
Hailey Oestreich
Texas State Bar No. 24116627
Email: hoestreich@jw.com
William T. Nilsson
Texas State Bar No. 24123350
Email: wnilsson@jw.com
JACKSON WALKER LLP
2323 Ross Avenue, Suite 600
Dallas, Texas 75201
Telephone: (214) 953-5948
Facsimile: (214) 661-6848
ATTORNEY FOR MUSARUBRA US LLC,
d/b/a TRELLIX

/s/ Melissa Richards Smith

Melissa Richards Smith
Texas State Bar No. 24001351
melissa@gillamsmithlaw.com
GILLAM & SMITH, LLP
303 South Washington Avenue
Marshall, TX 75670
Telephone: 903-934-8450
Facsimile: 903-934-9257

Kelly C. Hunsaker
KHunsaker@winston.com
California Bar No. 168307
Michael R. Rueckheim
Texas Bar No. 24081129
MRueckheim@winston.com
Eimeric Reig-Plessis
EReigPlessis@winston.com

California Bar No. 321273
WINSTON & STRAWN LLP
255 Shoreline Drive, Suite 520
Redwood City, CA 94065
Telephone: (650) 858-6500
Facsimile: (650) 858-6550
***ATTORNEYS FOR PALO ALTO
NETWORKS, INC.***

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 14, 2023, a true and correct copy of the above and foregoing document has been served on all counsel of record who are deemed to have consented to electronic service via the Court's CM.ECF system per Local Rule CV-5(a)(3)

/s/ Eric H. Findlay

Eric H. Findlay